



*The following information was recently provided to NYSTRS' participating employers. As a Retirement System delegate, it is important you are aware of these issues. Please share this Delegate News with NYSTRS members in your district.*

## **Reporting of Compensation Earned in Extended Day and Summer Enrichment Programs**

Proper reporting by school districts impacts NYSTRS' actuarial soundness, the employer contribution rate, and our ability to accurately calculate benefits. This bulletin clarifies reporting of compensation for teachers employed in extended day and summer enrichment programs.

Generally, only earnings from such programs that meet ALL the following conditions are considered to be pensionable:

1. The program's primary purpose must be instruction of district students, not child care.
2. The district should not make a profit from the program, and any fee charged to students for participation must be nominal (e.g., a program may meet the criteria if students pay a small fee for supplies, but it would not qualify if students must pay fees that fully fund the program).
3. The program must be validly authorized (i.e., the program is included in the district's collective bargaining agreement, or it has been established by the New York State Education Department or under a federal or state grant).<sup>1</sup>
4. The employer has legal responsibility and control of the program.
5. The program is substantially carried out on school premises or other authorized locations.
6. Payment to System members must be made from public funding (i.e., tax revenue, or federal or state grants) and via regular district payroll.
7. The instructional curriculum should account for at least 50% of the program time, reflect traditional components of the district's educational program, and require a certified teacher as an instructor.
8. Services rendered by System members must be related to the duties of a full-time teacher or administrator.
9. The district must have an employer-employee relationship with the program's employees.

If **ALL** the conditions listed above are met, employers should report such payments as "C: MTD Instructional Pay" or "D: MTD Summer School." NYSTRS members teaching in the program would generally be entitled to service credit for such work, and their earnings would generally be pensionable. For such earnings to be included in their final average salary (FAS) for retirement benefits, members must have a history of providing such services well beyond the period prior to retirement. Absent this history, payments may not be included in the FAS because such payments are

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<sup>1</sup> A summer enrichment program does not necessarily have to follow a traditional summer school curriculum approved by the State Education Department pursuant to Part 110 of the Commissioner's regulations for earnings received to be pensionable.



not reasonably representative of career earnings, serve to artificially inflate the member's salary and have a harmful effect on the actuarial soundness of the retirement plan.

For programs that are not primarily academic in nature but meet all the other criteria in the list, earnings may be reported as "L: MTD Non-Regular Compensation," which would only be pensionable in the calculation of a five-year FAS for those with a membership date prior to July 1, 1973. The mandatory deductions for Tiers 5 and 6 contributing members should not be withheld from such payments, and service days should not be calculated for this pay category. Employers will only be billed for any Tier 1 members receiving this payment.

Employers that believe a program meets the criteria for reportable compensation must maintain detailed records of hours spent by teachers in such programs, per Education Law §520(1). The records should also reflect the nature of the services provided by each teacher, as well as subjects and classes taught. These records must be made available to the System upon request.

The System reserves the right to request additional information on these programs and may determine payments are not pensionable in any or all of the following circumstances, since such payments would artificially inflate the FAS:

- When negotiated on the eve of retirement.
- When requiring resignation within a certain window of time.
- When subject to terms and conditions restricting coverage to only a select group of retirement-eligible employees.
- When paid in other circumstances indicating an attempt to inflate a member's FAS.

In addition, the System reserves the right to treat as non-pensionable compensation any payment for services in programs that (though operated on employer premises and under employer auspices) are in substance programs of third parties, not the employer.

**Please note:** This bulletin is not intended to address certain extracurricular activities NYSTRS has always included in the three-year FAS. These include coaching, tutoring, summer school teaching, chaperoning and supervision of traditional after-school student clubs. To the extent such items have been reportable in the past, these activities should continue to be reported as pensionable earnings.

Questions regarding this bulletin should be directed to our Employer Reporting Unit at 800-348-7298, ext. 6220.